

California Secretary of State

Notice of Proposed Regulatory Action

NOTICE IS HEREBY GIVEN that the Secretary of State is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Secretary of State at its office not later than 5:00 p.m. on October 10, 2014.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: August 22, 2014, through October 10, 2014.

AUTHORITY AND REFERENCE

Under authority established in California Government Code section 12172.5, the California Secretary of State may adopt regulations to assure the uniform application and administration of state election laws.

Further under authority established in Elections Code sections 2500, 2501 and 19212, the Secretary of State shall adopt rules and regulations governing the election management system, ballot marking system, and the voting system source code escrow.

Authority cited: Sections 2501 and 19212, Elections Code; Section 12172.5, Government Code

Reference cited: Sections 2500, 2501 and 19212, Elections Code

INFORMATIVE DIGEST

A. Informative Digest

Current regulations require ballot tally source code to be stored in escrow. The current ballot tally regulations were promulgated in 1995 and have not been changed since. AB 829 and SB 360 added election management system, ballot marking system, and voting systems source codes to be placed in escrow, respectively.

The purpose of revising sections 20610 through 20682 of Title 2, Division 7, Chapter 6 of the California Code of Regulations is as follows:

1. Reflect the changes in current business practices
2. Remove requirements that are no longer relevant
3. Add EMS source code in accordance with AB 829 (Fong)
4. Replace ballot tally software program source code with the term "voting system source code(s)" in accordance with SB 360 (Padilla)
5. Add ballot marking system source code(s) in accordance with SB 360 (Padilla)

B. Policy Statement Overview/Anticipated Benefits of Proposal

Due to the changes in technology and improving business standards, many of the current regulations have become obsolete or insufficient to effectively secure the voting system source codes process.

The proposed changes provide current certified voting system source codes, as well as voting system source codes seeking certification, clear regulations that reflect current business practices and appropriate security measures. The updated regulations incorporate the changes in technology and ensure the introduction of new technology is implemented in a manner that does not jeopardize the security of the ballots. Accordingly, there are no direct benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for any regulations relating to this area, the Secretary of State has found that these are the only regulations dealing with escrow of source codes. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. This regulatory proposal updates existing regulations relating to the escrow of source codes.

D. Documents Incorporated by Reference: Yes. The *Escrow Company and Facility Application (2014)* is incorporated by reference.

E. Documents Relied Upon in Preparing the Regulations: Economic Impact Assessment

FISCAL IMPACT ESTIMATES AND ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: No

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Secretary of State has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Impact on Jobs/New Businesses: The Secretary of State has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Due to the changes in technology and improving business standards, many of the current regulations have become obsolete or insufficient.

The proposed changes provide regulations that reflect current business practices. Accordingly, there are no direct benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Cost Impact on Representative Private Person or Business: The cost impact will be a sum of approximately \$12,000 that is split between two election management system companies and another sum of approximately \$12,000 split between four voting system companies to store source code in escrow.

Effect on Housing Costs: None

Effect on Small Business: The Secretary of State has determined that the proposed regulations will affect small businesses. The small businesses impacted will be companies that are involved with voting systems, ballot marking, election management systems, and source code escrow.

Economic Impact Assessment/Analysis Summary Comments: This proposed regulation is not a “major regulation” therefore there is no economic impact assessment comments from the Department of Finance nor response.

CONSIDERATION OF ALTERNATIVES

The Secretary of State must determine that no reasonable alternative is considered to the regulations or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The Secretary of State has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Secretary of State website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the Secretary of State contact or on the website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. You may obtain a copy of the final statement of reasons once it has been prepared from the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Ryan Macias
Secretary of State
1500 11th St., 6th Floor
Sacramento, CA 95814
(916) 651-7835

Or to: Ryan.Macias@sos.ca.gov

The back up contact person is:

Susan Lapsley
Secretary of State
1500 11th St., 6th Floor
Sacramento, CA 95814
(916) 651-7837

Or to: Susan.Lapsley@sos.ca.gov

Website Access: Materials regarding this proposal can be found at
www.sos.ca.gov/regulations/proposed/